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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 12, 2012

Ernesto Alvarez, Plant Manager
Steve Azevedo, California Environmental Manager
Concrete Inc. dba Knife River
24717 E. Brandt Road
Lodi, CA 95240

Steve Azevedo, California Environmental Manager
Concrete Inc. dba Knife River
P.O. Box 66001
Stockton, CA 95206

William Schneider, President and Chief Executive Officer
Knife River Corp.
1150 W Century Avenue
Bismarck, ND 58503

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs Alvarez, Azevedo, and Schneider:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Concrete Inc. dba Knife River ("Facility") located at 24717 E. Brandt Road in Lodi, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Knife River").

This letter addresses Knife River's unlawful discharge of pollutants from the Facility into Bear Creek which flows into the San Joaquin River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA

Notice of Violations and Intent to File Suit

S000001, California Regional Water Quality Control Board, Central Valley Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 5S39I022636. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Knife River is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Knife River, Ernesto Alvarez, Steve Azevedo, and William Schneider under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On or about May 3, 2010, Knife River sent its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). In its NOI, Knife River certifies that the Facility is classified under SIC code 1442 ("construction sand and gravel"). The Facility collects and discharges storm water from its 1080-acre industrial site through at least three outfalls that discharge directly into Bear Creek which flows into the San Joaquin River.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. See http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of the San Joaquin River and its tributaries include among others water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas,

impairs people's use of the San Joaquin River and Bear Creek for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and its tributaries. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. It provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.*

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Knife River: pH – 6.0 - 9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, nitrate + nitrite as nitrogen ("N+N") – 0.68 mg/L, and total organic carbon ("TOC") – 110 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Knife River has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General

Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Knife River has discharged and continues to discharge storm water with unacceptable levels of TSS, N+N, and other pollutants in violation of the General Permit. Knife River's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

On September 29, 2012, and October 10, 2011, Knife River discharged storm water with excessive levels of TSS. On and information and belief, CSPA alleges that these discharges violated the narrative water quality standards established in the Basin Plan for both suspended materials and turbidity and have thus violated Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2). This is evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Outfall (as identified by the Facility)
2/29/2012	Total Suspended Solids	3900 mg/L	100 mg/L	Outfall #1
2/29/2012	Total Suspended Solids	3400 mg/L	100 mg/L	Outfall #2
10/10/2011	Total Suspended Solids	4200 mg/L	100 mg/L	Outfall #1
10/10/2011	Total Suspended Solids	5600 mg/L	100 mg/L	Outfall #2
2/18/2011	Total Suspended Solids	150 mg/L	100 mg/L	Outfall #1
2/18/2011	Total Suspended Solids	180 mg/L	100 mg/L	Outfall #2
2/29/2012	Nitrate + Nitrite Nitrogen	7.6 mg/L	0.68 mg/L	Outfall #1
2/29/2012	Nitrate + Nitrite Nitrogen	4.6 mg/L	0.68 mg/L	Outfall #2
10/10/2011	Nitrate + Nitrite Nitrogen	3.9 mg/L	0.68 mg/L	Outfall #1
10/10/2011	Nitrate + Nitrite Nitrogen	3.6 mg/L	0.68 mg/L	Outfall #2

The information in the above table reflects data gathered from Knife River's self-monitoring during the 2010-2011 and 2011-2012 wet seasons. CSPA alleges that during each of those wet seasons and continuing through today, Knife River has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to total suspended solids (100 mg/L) and nitrate + nitrite nitrogen (0.68 mg/L).

CSPA's investigation, including its review of Knife River's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values indicates that Knife River has not implemented BAT and BCT at the Facility for its discharges of TSS, N+N, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Knife River was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Knife River is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least May 3, 2010 and that will occur at the Facility subsequent to the date of this Notice of Violations and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Knife River has discharged storm water containing impermissible levels of TSS and N+N in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.¹

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Knife River is subject to penalties for violations of the General Permit and the Act since at least May 3, 2010.

B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to

¹ The rain dates are all the days when 0.1" or more rain fell as calculated from a weather station in Lodi nearby the Facility.

sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 1442, including Knife River, must analyze each of its storm water samples for N+N. *Id.*, Table D (Sector J). Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Knife River is not representative of the quality of the Facility’s various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CSPA, alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

On information and belief, CSPA alleges that Knife River violated Section B(4) by failing to make monthly visual observations at each storm water outfall, and failing to make accurate observations of the storm water discharges that it did observe. Though Knife River reported that it had three storm water discharge locations during the 2011-2012 wet season, the Facility only made monthly visual observations for one outfall. The Facility did not indicate to which outfall the observations pertained; the observation sheets did not contain any identifying information. Moreover, the Facility made observations on October 10, 2011, and February 29, 2012, which all resulted in excessive levels of TSS. Knife River reported that the discharged water was not turbid in both cases, yet the levels of TSS ranged from 3400 mg/L – 5600 mg/L. On information and belief, CSPA believes it would be impossible for water to contain TSS levels of that magnitude and not display any amount of turbidity.

In addition, Knife River also violated Section B(5)(c)(iii) by failing to monitor its storm water discharges in the 2010-2011 wet season for N+N.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Knife River is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since at least May 3, 2010.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update

an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Knife River's Annual Reports indicate that Knife River has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Knife River has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Knife River has been in continuous violation of Section A and Provision E(2) of the General Permit every day since May 3, 2010 at the very latest, and will continue to be in violation every day that Knife River fails to prepare, implement, review, and update an effective SWPPP. Knife River is subject to penalties for violations of the Order and the Act occurring since May 3, 2010.

D. Failure to File True and Correct Annual Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in

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their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the previous two years, Knife River and its agents, Steve Azevedo and Ernesto Alvarez, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Knife River has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Knife River failed to submit a complete or correct report and every time Knife River or its agents falsely purported to comply with the Act. Knife River is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least June 21, 2011.

IV. Persons Responsible for the Violations.

CSPA puts Knife River, Ernesto Alvarez, Steve Azevedo, and William Schneider on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Knife River, Ernesto Alvarez, Steve Azevedo, and William Schneider on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067
Fax (209) 464-1028
E-Mail: deltakeep@me.com

VI. Counsel.

CSPA has retained our office to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
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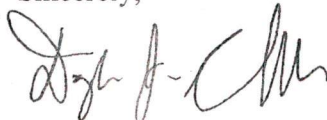
michael@lozeaudrury.com
doug@lozeaudrury.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Knife River to a penalty of up to \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Knife River and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

cc via first-class mail: CT Corporation, Agent for Service of Process for Knife River Corporation (Entity Number C2338922) and Knife River Corporation – Northwest (Entity Number C1238453)
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ATTACHMENT A
Rain Dates, Knife River, Lodi, California

5/10/2010	2/18/2011	3/13/2012
5/25/2010	2/19/2011	3/14/2012
10/17/2010	2/24/2011	3/16/2012
10/23/2010	2/25/2011	3/17/2012
10/24/2010	3/6/2011	3/25/2012
11/7/2010	3/15/2011	3/27/2012
11/19/2010	3/16/2011	3/28/2012
11/20/2010	3/18/2011	3/31/2012
11/23/2010	3/19/2011	4/11/2012
11/27/2010	3/20/2011	4/12/2012
12/4/2010	3/23/2011	4/13/2012
12/5/2010	3/24/2011	4/25/2012
12/6/2010	3/25/2011	4/26/2012
12/8/2010	3/26/2011	10/22/2012
12/14/2010	5/15/2011	11/1/2012
12/17/2010	5/18/2011	11/9/2012
12/18/2010	5/28/2011	11/16/2012
12/19/2010	10/5/2011	11/17/2012
12/22/2010	10/10/2011	11/18/2012
12/25/2010	11/19/2011	11/22/2012
12/28/2010	11/20/2011	11/28/2012
12/29/2010	1/20/2012	11/30/2012
1/1/2011	1/21/2012	12/1/2012
1/2/2011	1/22/2012	12/2/2012
1/30/2011	1/23/2012	12/5/2012
2/16/2011	2/7/2012	
2/17/2011	2/13/2012	
	2/29/2012	

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